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DEPARTMENT OF EDUCATION

34 CFR Parts 104, 105, 222, 300, 361, 373, 385, 668, and
674

RIN 1801-AA11

[Docket ID ED-2017-OS-0051]

Rosa's Law

AGENCY: Office of the Secretary, Department of Education.

ACTION: Final regulations.

SUMMARY: Rosa's Law changes references to "mental
retardation" in Federal law to "intellectual disability" or
"intellectual disabilities." These final regulations
implement this statutory change in applicable Department of
Education regulations.

DATES: These regulations are effective [INSERT DATE 30
DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

Rosa's Law (Public Law 111-256) amended sections of the Rehabilitation Act of 1973, as amended (Rehabilitation Act), the Individuals with Disabilities Education Act (IDEA), the Higher Education Act of 1965, as amended (HEA), and the Elementary and Secondary Education Act of 1965, as amended (ESEA), by removing the words "mental retardation" and replacing them with the words "intellectual disability" or "intellectual disabilities." We are therefore revising applicable sections in title 34 of the Code of Federal Regulations (CFR). The following paragraphs describe the changes we are making to the regulations and the specific statutory changes on which the regulatory changes are based.

Rehabilitation Act

Statute: Rosa's Law amended the Rehabilitation Act by substituting "intellectual disability" for "mental retardation" in section 7(21)(A)(iii) (29 U.S.C. 705(21)(A)(iii)); substituting "intellectual disabilities" for "mental retardation" in section 204(b)(2)(C)(vi) (29

U.S.C. 764(b)(2)(C)(vi)); and substituting "President's Disability Employment Partnership Board and the President's Committee for People with Intellectual Disabilities" for "President's Committees on Employment of People With Disabilities and on Mental Retardation" in section 501(a) (29 U.S.C. 791(a)).

Regulations: We have substituted "intellectual disability" for "mental retardation" and "having an intellectual disability" for "mentally retarded" in the following definitions:

TERM	SECTION WITHIN TITLE 34, CFR
"handicapped person"	§104.3(j)(2)(i)
"individual with a severe disability"	§385.4
"individual with a significant disability"	§§361.5 and 373.4
"individual with handicaps"	§105.3
"physical or mental impairment"	§361.5

We have also substituted "intellectual disability" for "mental retardation" in Appendix A to part 104.

Reasons: We have made these regulatory revisions to implement the changes made to the Rehabilitation Act by Rosa's Law.

IDEA

Statute: Rosa's Law amended the IDEA by substituting "intellectual disabilities" for "mental retardation" in sections 601(c)(12)(C) (20 U.S.C. 1400(c)(12)(C)) and 602(3)(A)(i) and (30)(C) (20 U.S.C. 1401(3)(A)(i) and (30)(C)).

Regulations: We have revised Appendix F to 34 CFR part 300 and the following sections in title 34 to remove references to "mental retardation" and add, in their place, references to an "intellectual disability": §§300.8(a)(1), (c)(6), (c)(7), and (c)(10)(ii); 300.309(a)(3)(ii); and 300.311(a)(6). Additionally, in §300.8(c)(6), we have replaced the defined term "mental retardation" with the defined term "intellectual disability."

Reasons: We have made these regulatory revisions to implement the changes made to the IDEA by Rosa's Law.

HEA

Statute: Rosa's Law amended section 760(2)(A) of the HEA (20 U.S.C. 1140(2)(A)) by removing the words "mental retardation or."

Regulations: We have revised 34 CFR 668.231(b)(1) to remove the reference to "mental retardation or" and revised 34 CFR 674.51(1)(1) to remove the words "mentally retarded" and add, in their place, the words "individuals with intellectual disabilities."

Reasons: We have made these regulatory revisions to implement the changes made to the HEA by Rosa's Law.

ESEA

Statute: Rosa's Law amended the ESEA by substituting "intellectual disabilities" for "mental retardation" in section 7202(16)(E) (20 U.S.C. 7512(16)(E)).

Regulations: We have revised the authority section to 34 CFR part 222 and also the authority section for 34 CFR 222.50 to include a citation to Rosa's Law.

Reasons: Section 222.50 incorporates by reference the definition of "child with a disability" in 34 CFR 300.8. To account for the fact that we are amending 34 CFR 300.8 in this rulemaking, we have also revised the relevant authority sections in part 222 accordingly.

Executive Orders 12866, 13563, and 13771

Under Executive Order 12866, the Secretary must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866, it must identify two deregulatory actions. For Fiscal Year 2017, any new incremental costs associated with a new regulation must be

fully offset by the elimination of existing costs through deregulatory actions. The final regulations are not a significant regulatory action. Therefore, the requirements of Executive Order 13771 do not apply.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

With respect to Executive Orders 12866 and 13563, the amendments we are making through this rulemaking merely change the terminology used in our regulations, and they do not change any substantive requirements. Additionally, this rulemaking merely implements the changes that are required by statute.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these regulations merely reflect statutory changes and do not establish or affect substantive policy. Therefore, under 5 U.S.C. 553(b) (B), the Secretary has determined that proposed regulations are unnecessary and contrary to the public interest.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Intergovernmental Review

These regulations are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

Based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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List of Subjects

34 CFR Part 104

Civil rights, Equal educational opportunity, Equal employment opportunity, Individuals with disabilities.

34 CFR Part 105

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

34 CFR Part 222

Administrative practice and procedure, Education of individuals with disabilities, Elementary and secondary education, Federally affected areas, Grant programs-education, Indians-education, Reporting and recordkeeping requirements, School construction.

34 CFR Part 300

Administrative practice and procedure, Education of individuals with disabilities, Elementary and secondary education, Equal educational opportunity, Grant programs-education, Privacy, Private schools, Reporting and recordkeeping requirements.

34 CFR Part 361

Grant programs-education, Grant programs-social programs, Manpower training programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 373

Grant programs-education, Vocational rehabilitation.

34 CFR Part 385

Grant programs-social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Part 674

Loan programs-education, Reporting and recordkeeping, Student aid.

Dated: July 3, 2017.

Betsy DeVos,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends parts 104, 105, 222, 300, 361, 373, 385, 668, and 674 of title 34 of the Code of Federal Regulations as follows:

PART 104--NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

1. The authority citation for part 104 is revised to read as follows:

AUTHORITY: 20 U.S.C. 1405; 29 U.S.C. 794; Pub. L. 111-256, 124 Stat. 2643.

§104.3 [Amended]

2. Section 104.3(j)(2)(i)(B) is amended by removing the words "mental retardation" and adding, in their place, the words "intellectual disability".

Appendix A to part 104 [Amended]

3. Appendix A to part 104 is amended by:

A. In subpart A, in the fourth sentence of the second paragraph of section 3 (Handicapped person), removing the words "mental retardation" and adding, in their place, the words "intellectual disability".

B. In subpart A, in the third sentence of the eighth paragraph of section 3 (Handicapped person), removing the

words "mentally retarded" and adding, in their place, the words "having an intellectual disability".

C. In subpart D, in the fifth sentence of the fifth paragraph of section 24 (Educational setting), removing the words "severely retarded persons" and adding, in their place, the words "persons with severe intellectual disabilities".

D. In subpart D, in the second sentence of the second paragraph of section 28 (Private education), removing the words "mentally retarded persons" and adding, in their place, the words "persons with intellectual disabilities".

PART 105--ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF
HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE
DEPARTMENT OF EDUCATION

4. The authority citation for part 105 is revised to read as follows:

Authority: 29 U.S.C. 794; Pub. L. 111-256, 124 Stat. 2643; unless otherwise noted.

§105.3 [Amended]

5. Section 105.3 is amended by, in paragraph (1)(ii) of the definition of "Individual with handicaps" and in the paragraph that immediately follows paragraph (1)(ii), removing the words "mental retardation" wherever they

appear and adding, in their place, the words "intellectual disability".

PART 222--IMPACT AID PROGRAMS

6. The authority citation for part 222 is revised to read as follows:

AUTHORITY: 20 U.S.C. 7701-7714; Pub. L. 111-256, 124 Stat. 2643; unless otherwise noted.

§222.50 [Amended]

7. Section 222.50 is amended by removing the authority citation that follows the section.

PART 300--ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

8. The authority citation for part 300 is revised to read as follows:

AUTHORITY: 20 U.S.C. 1221e-3, 1406, 1411-1419, and 3474; Pub. L. 111-256, 124 Stat. 2643; unless otherwise noted.

9. Section 300.8 is amended by:

A. In paragraph (a)(1), removing the words "mental retardation" and adding, in their place, the words "an intellectual disability".

B. Revising paragraph (c)(6).

C. In paragraph (c)(7), removing the words "mental retardation" in both places they appear and adding, in their place, the words "intellectual disability".

D. In paragraph (c)(10)(ii), removing the words "mental retardation" and adding, in their place, the words "intellectual disability".

E. Removing the authority citation that follows the section.

The revisions read as follows:

\$300.8 Child with a disability.

* * * * *

(c) * * *

(6) Intellectual disability means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance. The term "intellectual disability" was formerly termed "mental retardation."

* * * * *

\$300.309 [Amended]

10. Section 300.309 is amended by:

A. In paragraph (a)(3)(ii), removing the words "Mental retardation" and adding, in their place, the words "An intellectual disability".

B. Removing the authority citation that follows the section.

§300.311 [Amended]

11. Section 300.311 is amended by:

A. In paragraph (a)(6), removing the punctuation and words "or motor disability; mental retardation" and adding, in their place, the punctuation and words "motor disability, or an intellectual disability;".

B. Removing the authority citation that follows the section.

12. Appendix F to Part 300 is amended by:

A. Under the row labeled "DEFINITIONS (I)", adding, in alphabetical order, the entry "Intellectual Disability 300.8(c)(6)".

B. Under the row labeled "DEFINITIONS (J-O)", removing the entry "Mental retardation 300.8(c)(6)".

C. Adding a row to the index, in alphabetical order, labeled "INTELLECTUAL DISABILITY (Definition) §300.8(c)(6)".

D. Removing the row in the index labeled "MENTAL RETARDATION (Definition) 300.8(c)(6)".

The additions read as follows:

APPENDIX F TO PART 300—INDEX FOR IDEA—PART B REGULATIONS (34 CFR PART 300)

* * * * *	* *
DEFINITIONS (I)	
• Intellectual Disability	300.8(c)(6).
* * * * *	* *
INTELLECTUAL DISABILITY (Definition)	300.8(c)(6).
* * * * *	* *

PART 361--STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

13. The authority citation for part 361 is revised to read as follows:

AUTHORITY: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c); Pub. L. 111-256, 124 Stat. 2643; unless otherwise noted.

§ 361.5 [Amended]

14. Section 361.5 is amended by:

A. Removing the authority citation that follows paragraph (c)(30).

B. Removing the authority citation that follows paragraph (c)(40).

PART 373--REHABILITATION NATIONAL ACTIVITIES PROGRAMS

15. The authority citation for part 373 is revised to read as follows:

AUTHORITY: Section 303(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 773(b); Pub. L. 111-256, 124 Stat. 2643; unless otherwise noted.

§373.4 [Amended]

16. Section 373.4 is amended by removing the authority citation that follows the definition of "Individual with a significant disability".

PART 385--REHABILITATION TRAINING

17. The authority citation for part 385 is revised to read as follows:

Authority: Sections 12(c), 301, and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 771, and 772; Pub. L. 111-256, 124 Stat. 2643; unless otherwise noted.

§385.4 [Amended]

18. Section 385.4 is amended by removing the authority citation that follows the section.

PART 668--STUDENT ASSISTANCE GENERAL PROVISIONS

19. The authority citation for part 668 is revised to read as follows:

AUTHORITY: 20 U.S.C. 1001-1003, 1070a, 1070g, 1085, 1087b, 1087d, 1087e, 1088, 1091, 1092, 1094, 1099c, and 1099c-1, 1221e-3, and 3474; Pub. L. 111-256, 124 Stat. 2643; unless otherwise noted.

§668.231 [Amended]

20. Section 668.231 is amended by:

A. In paragraph (b)(1) introductory text, removing the words "mental retardation or".

B. Removing the authority citation that follows the section.

PART 674--FEDERAL PERKINS LOAN PROGRAM

21. The authority citation for part 674 is revised to read as follows:

AUTHORITY: 20 U.S.C. 1070g, 1087aa-1087hh; Pub. L. 111-256, 124 Stat. 2643; unless otherwise noted.

§674.51 [Amended]

22. Section 674.51 is amended by:

A. In paragraph (1)(1), removing the words "Mentally retarded" and adding, in their place, the words "Individuals with intellectual disabilities".

B. Removing the authority citation that follows the section.

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